GAO
Accountability * Integrity * Reliability

Protests at GAO: An Introduction

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Bid Protests at GAO

- GAO’s bid protest function began in 1920s and was codified in the Competition in Contracting Act of 1984 (CICA).
- CICA directs GAO to provide for the *independent, expeditious,* and *inexpensive* resolution of protests.
- GAO's bid protest decisions establish a uniform body of law relied on by Congress, the courts, contracting agencies, and the public.

GAO's role in the 3 phases of government procurement

- **Pre-award**: GAO considers protests to ensure that agencies have not improperly restricted competition.

- **Award**: GAO considers protests challenging awards primarily to ensure that the selection was reasonable and consistent with the solicitation criteria.

- **Post-award**: GAO generally does not consider challenges to contract administration.

GAO strives for balance

...between the need to hold agencies accountable and protect aggrieved offerors' due process rights

...and...

...the need to ensure that the government procurement process can proceed without undue disruption

Basic Features of the GAO Bid Protest Process

- Broad jurisdiction:
  - Protests of procurement actions of federal agencies.
  - Anyone who submitted an offer can protest.
- Process is (fairly) inexpensive & informal.
- "*Automatic stay*" usually stops agency from proceeding, triggered by GAO's notice of protest filed within a specified timeframe.

Basic Features of the GAO Bid Protest Process

- Agency must provide a responsive report (with relevant documents) to GAO and parties within 30 days of GAO's notice of protest.
- Protester and intervenor(s) comment on report within 10 days of receipt (or such other timeframe as established by GAO).
- GAO may hold a hearing or otherwise seek further information to complete or explain the record.

Basic Features of the GAO Bid Protest Process

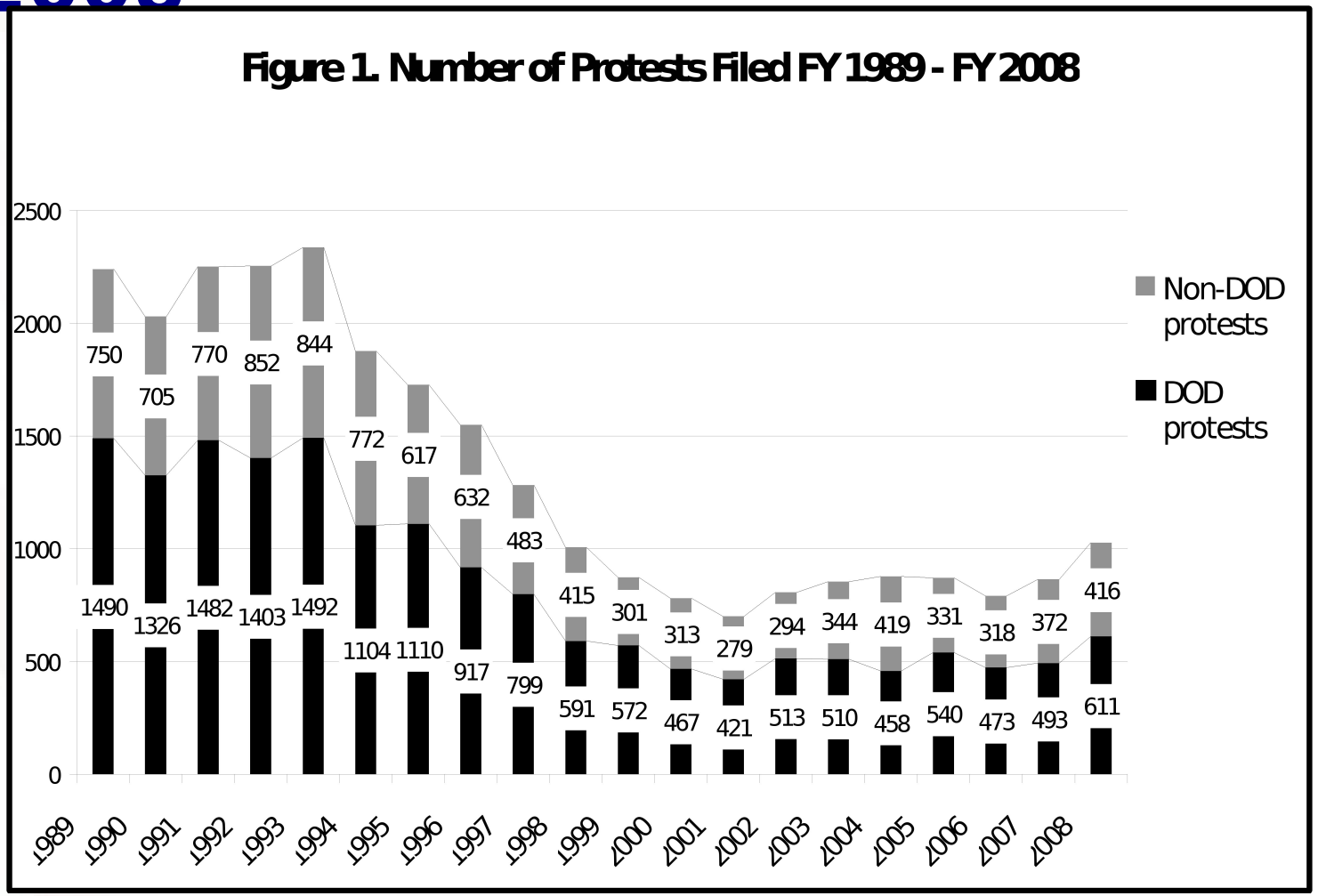
- GAO will *sustain* protest if it finds that protester was prejudiced by an agency's violation of procurement law or regulations.

- GAO will recommend remedy appropriate to the problem & reimbursement of protest and/or proposal preparation costs.

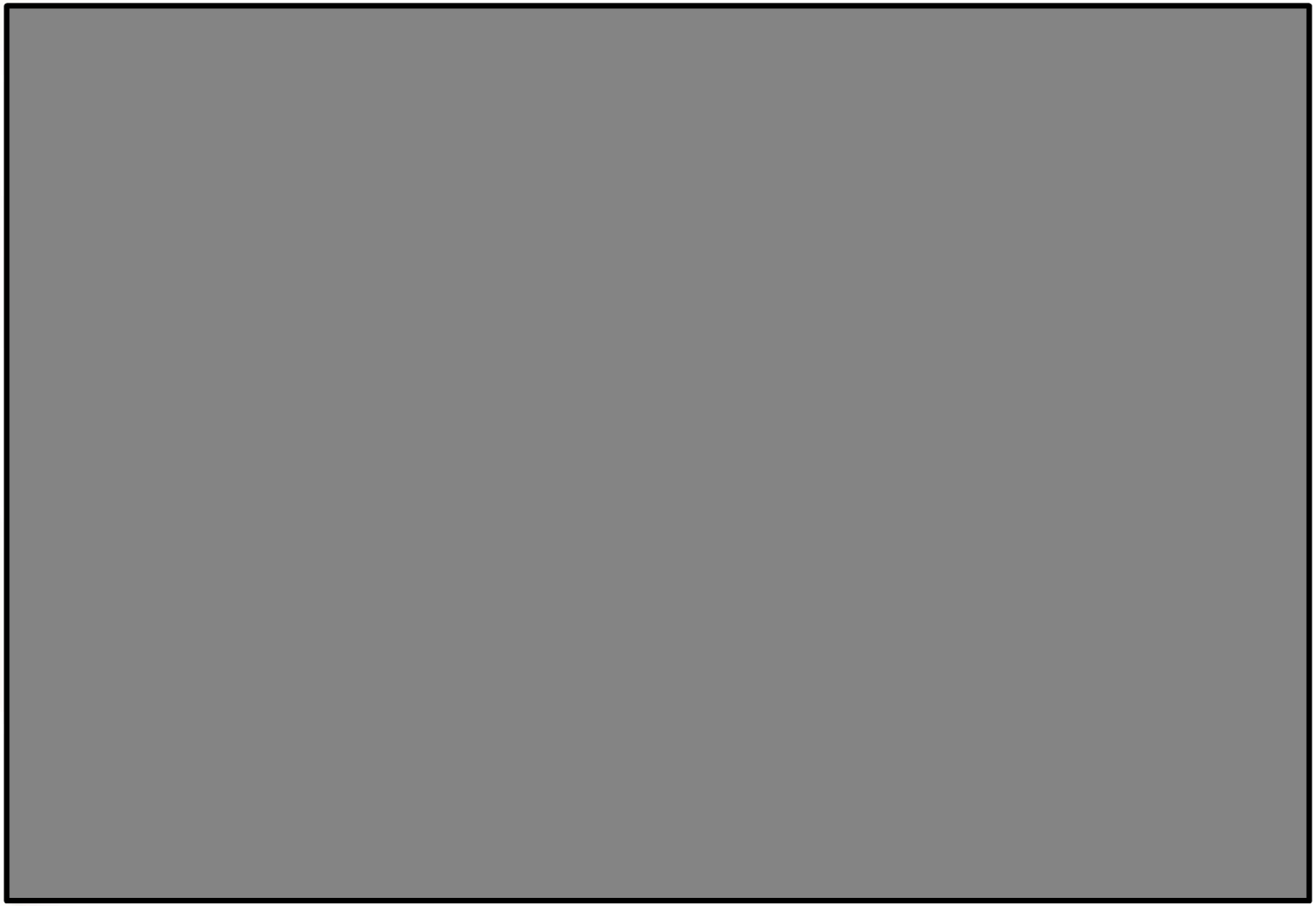
GAO BID PROTEST STATISTICS

	FY 2008	FY 2007	FY 2006	FY 2005	FY2004
Cases Filed	1,652 (up 17%)	1,411 (up 6%)	1,327 (down 2%)	1,356 (down 9%)	1,485 (up 10%)
Merit (Sustain + Deny) Decisions	291	335	249	306	365
Number of Sustains	60	91	72	71	75
Sustain Rate	21%	27%	29%	23%	21%
Effectiveness Rate	42%	38%	39%	37%	34%
ADR	78	62	91	103	123
ADR Success	78%	85%	96%	91%	91%
Hearings	6% (32 cases)	8% (41 cases)	11% (51 cases)	8% (41 cases)	9% (56 cases)

Number of Protests Filed FY 1989 - 2008



Percent Change from Year-to-Year

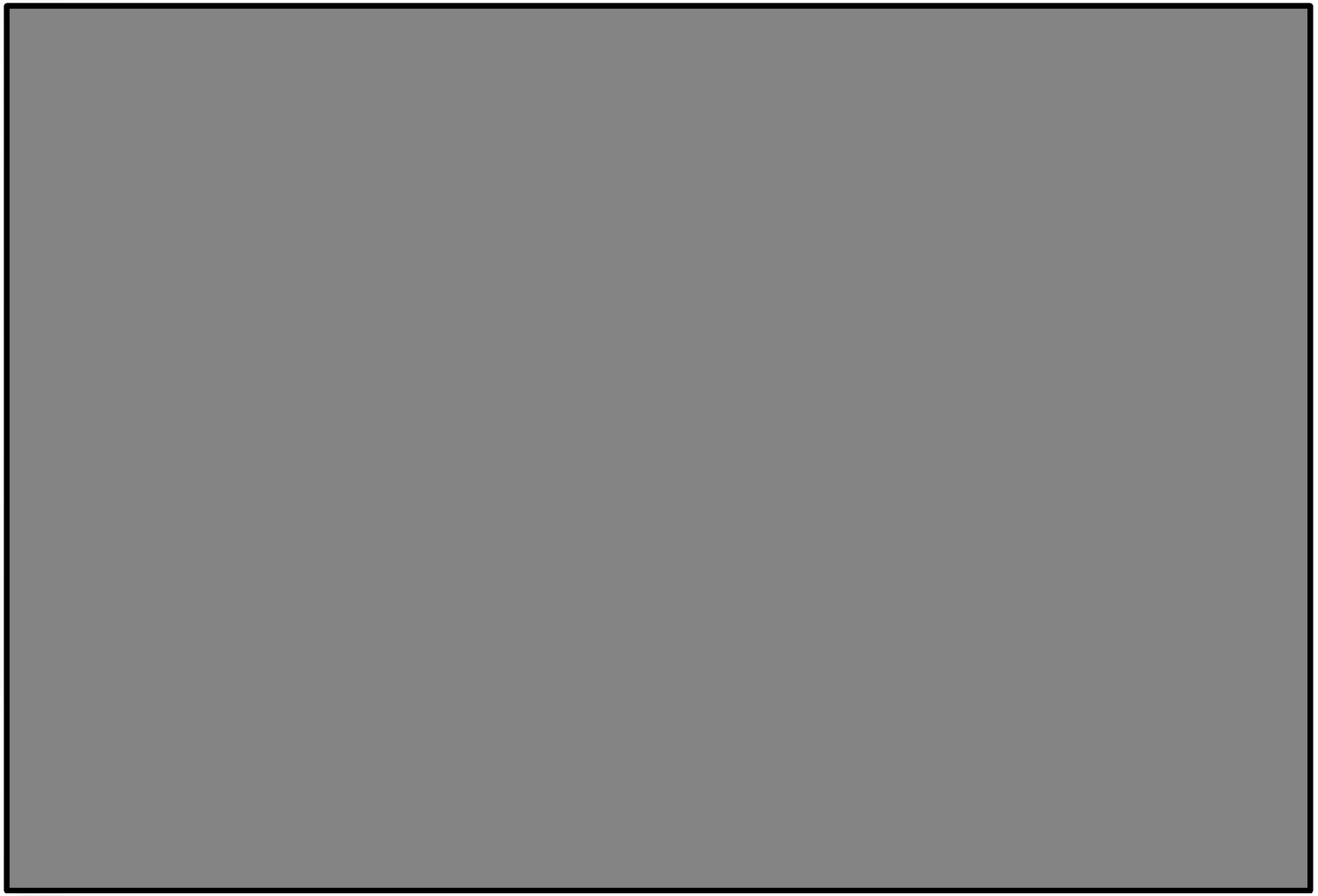


Number of Protests of DOD Procurements, FY 2004 - 2008

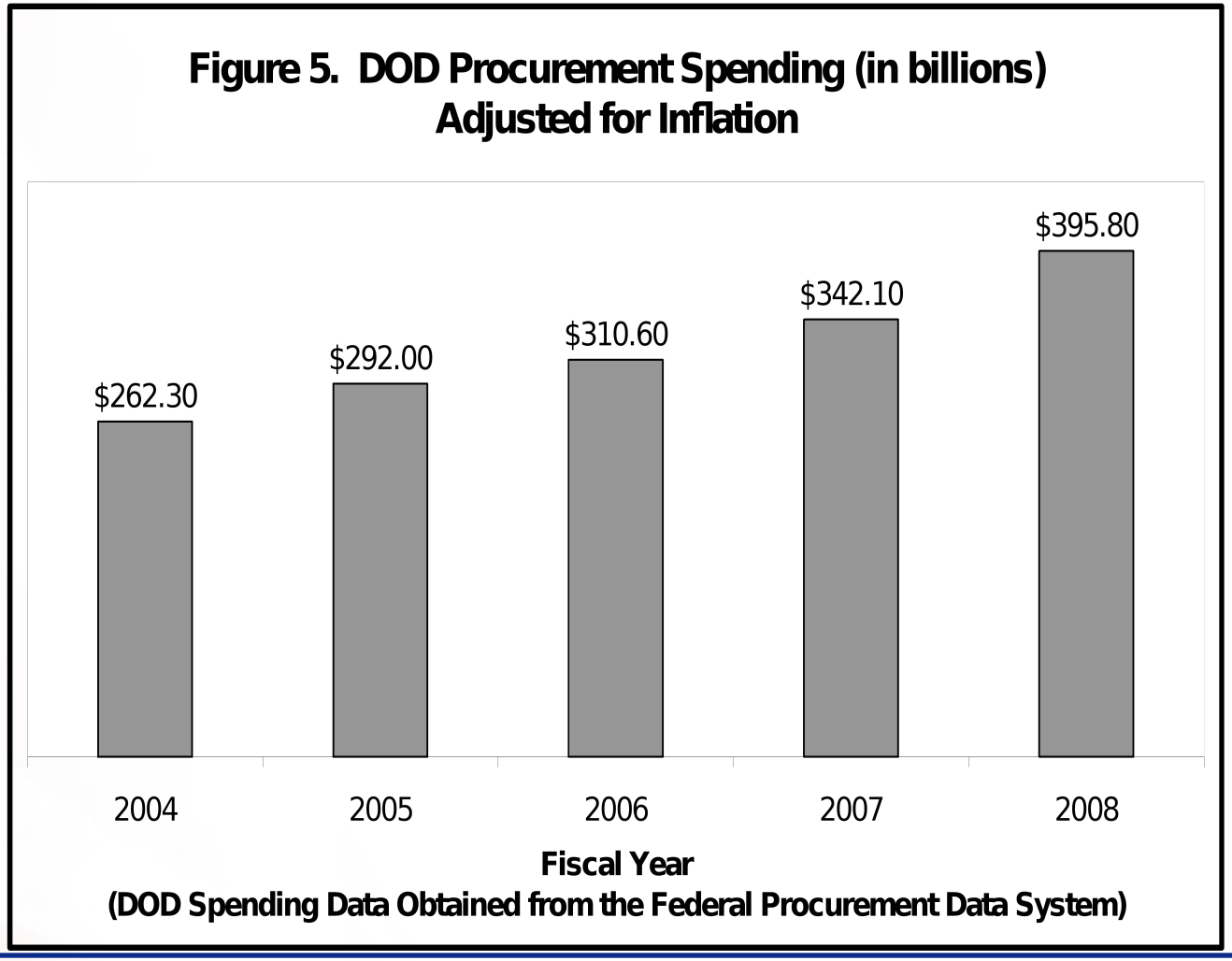
What are the delays to government procurements?

- Strict time limits on filing protests
  - Alleged apparent solicitation improprieties must be protested by bid opening or closing time.
  - All other protests must be filed within 10 days of when the protester knew or should have known basis.
  - If required debriefing, protest must be filed within 10 days of debriefing.
- GAO has only *100 days* to issue decision.
- If there is a stay, agency can override for urgency or best interest.

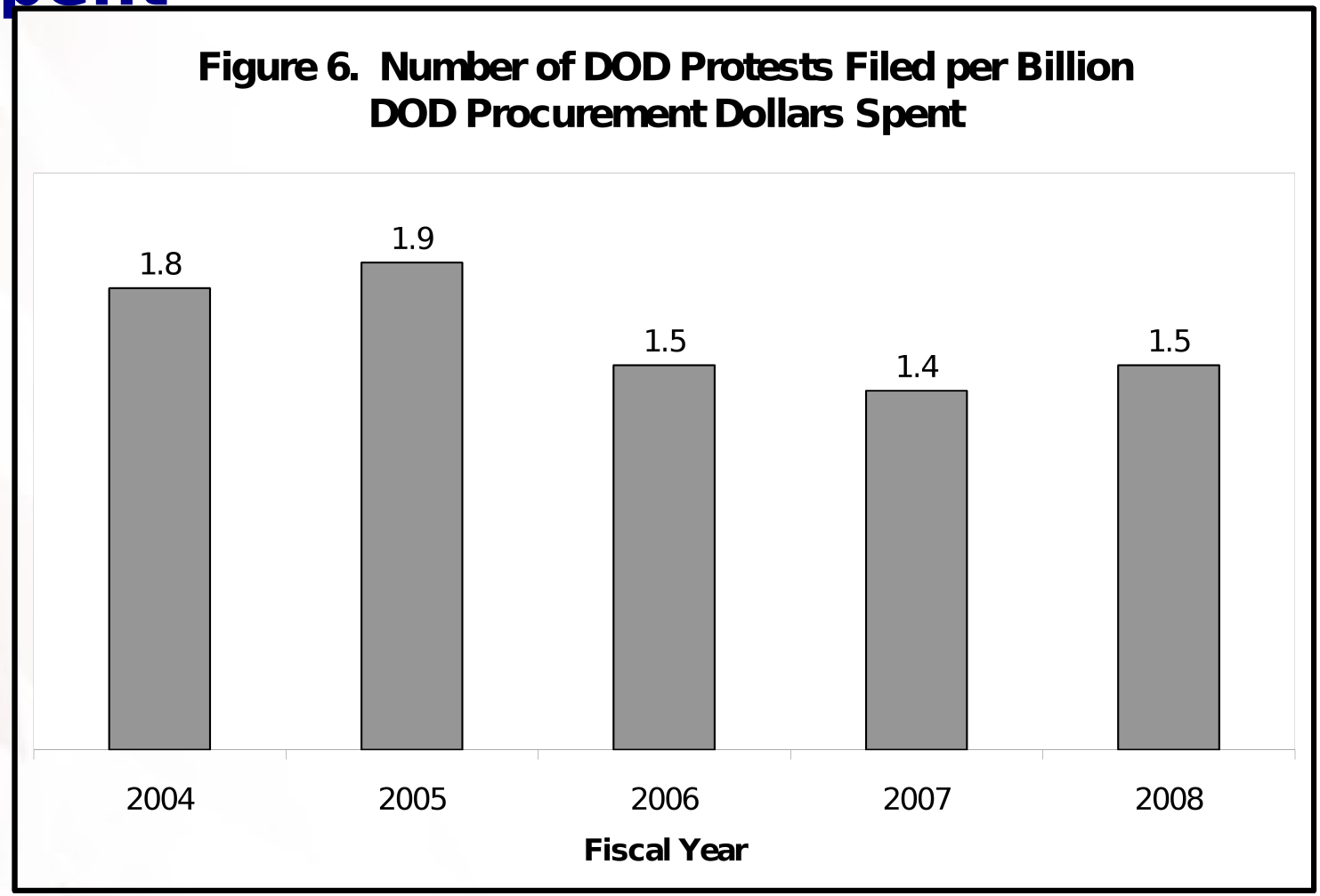
Percentage Closed Within 30 Days



DOD Procurement Spending, FY 2004 - 2008



Number of DOD Protests per Billion Spent



PL Organization

- PL consists of 5 groups of attorneys (about 30 total), who decide bid protests.
- Each group is headed by an Assistant General Counsel.
- All merit decisions are reviewed by the Associate General Counsel of PL.

Who Hears Protests at GAO ?

- Protests are heard by the Procurement Law (PL) Group within GAO's Office of General Counsel.
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DECISIONS

Protest decisions are available on line as follows:

- Once a redacted version is prepared, all unclassified sustains, denies, digested dismissals, digested reconsiderations, and digested cost decisions are transmitted to the Westlaw and Lexis on-line information services and are available almost immediately.
- The most recent decisions as above are available at www.gao.gov, Legal Products, Bid Protests.
- Many more decisions can be searched for by keyword or B-number using the search box at www.gao.gov.
- Most decisions since 1995 are available through Government Printing Office's GPO Access site (www.gpoaccess.gov) under the listing for GAO Comptroller General Decisions.